

## VII. Conclusion

As demonstrated above, the record supports a denial of the Petition by the Commission. Not only is the Petition nothing more than an untimely petition for reconsideration of the *Non-Accounting Safeguards Order*, it is also unsupported by Commission precedent or the Act. Furthermore, supporters of the Petition have failed to provide the Commission with reasonable grounds to grant the Petition, or any alternative proposals proffered as part of this proceeding. Accordingly, the Commission should recognize that the Petition would undermine, rather than support, competition, and should deny it without delay.

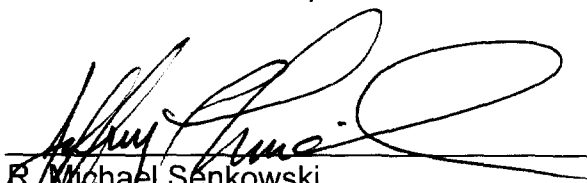
Respectfully submitted,

GTE Service Corporation and GTE  
Communications Corporation

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 463-5214

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge, HQE03J27  
Irving, TX 75038  
(972) 718-6969

By:

  
R. Michael Senkowski  
Jeffrey S. Linder  
WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

Its Attorneys

June 1, 1998

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Of GTE Service Corporation was served today, the 1<sup>st</sup> day of June on the following parties:

Janice M. Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

International Transcription Service  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Genevieve Morelli  
Executive Vice President & General Counsel  
CompTel  
1900 M Street, N.W.  
Suite 800  
Washington, D.C. 20036

David L. Sieradzki  
Jennifer A. Purvis  
Hogan & Hartson, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004

Gary L. Phillips  
Counsel for Ameritech  
Suite 1020  
1401 H Street, NW  
Washington, DC 20005

Richard J. Metzger  
Association for Local Telecommunications Services  
888 17<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20006

James W. Grudus  
AT&T Corp.  
Room 3250G3  
295 North Maple Avenue  
Basking Ridge, NJ 07920

James G. Pachulski  
Counsel for Bell Atlantic  
1320 North Court House Road  
Eight Floor  
Arlington, Virginia 22201

William B. Barfield  
Counsel for BellSouth  
1155 Peachtree St., NE  
Suite 1800  
Atlanta, GA 30309

Brad E. Mutschelknaus  
Counsel for e.spire Communications  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036

Michael J. Shortley, III  
Attorney for Frontier Corp.  
180 South Clinton Ave.  
Rochester, NY 14646

David W. Zesiger  
Independent Telephone & Telecommunications Alliance  
1300 Connecticut Ave., NW, Suite 600  
Washington, DC 20036

Cherie R. Kiser  
Counsel for Intermedia Communications Inc.  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004

Peter A. Rohrbach  
Counsel for LCI International Telecom Corp.  
Hogan & Hartson, L.L.P.  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

Frank W. Krogh  
Counsel for MCI  
1801 Pennsylvania Ave., NW  
Washington, DC 20006

L. Marie Guillory  
Counsel for National Telephone Cooperative Association  
2626 Pennsylvania Ave., NW  
Washington, DC 20037

Cathleen A. Massey  
NEXTLINK Communications, Inc.  
1730 Rhode Island Ave., NW  
Suite 1000  
Washington, DC 20036

Daniel M. Waggoner  
Davis Wright Tremaine LLP  
1155 Connecticut Ave., NW  
Suite 700  
Washington, DC 20036

Madelyn M. DeMatteo  
The Southern New England Telephone Company  
227 Church Street  
New Haven, CN 06510

Mark L. Evans  
Kellog, Huber, Hansen, Todd & Evans, P.L.L.C.  
1301 K Street, NW  
Suite 1000 West  
Washington, DC 20005

Robert M. Lynch  
One Bell Plaza, Suite 3703  
Dallas, TX 75202

Patricia L. C. Mahoney  
140 New Montgomery Street, Rm. 1523  
San Francisco, CA 94105

Leon M. Kestenbaum  
Counsel for Sprint Corp.  
1850 M Street, NW, 11<sup>th</sup> Floor  
Washington, DC 20036

Teresa Marrero  
Counsel for Teleport Communications Group Inc.  
Two Teleport Drive  
Staten Island, NY 10311

Mary McDermott  
Counsel for United States Telephone Assoc.  
1401 H Street, NW  
Suite 600  
Washington, DC 20005

David N. Porter  
Counsel for WorldCom, Inc.  
1120 Connecticut Ave., NW  
Suite 400  
Washington, DC 20036



R. Paul Margie

## **Exhibit A**

***In the Matter of the Application of GTE Communications  
Corporation, Cause No. 40831, Indiana Utility Regulatory  
Commission (Aug. 19, 1997)***

ORIGINAL

STATE OF INDIANA

## INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF GTE COMMUNICATIONS CORPORATION )  
FORMERLY NAMED GTE CARD SERVICES ) CAUSE NO. 40831  
INCORPORATED D/B/A GTE LONG )  
DISTANCE) FOR A CERTIFICATE OF )  
TERRITORIAL AUTHORITY TO RESELL )  
LOCAL EXCHANGE SERVICES, AND FOR )  
THE COMMISSION TO DECLINE TO ) APPROVED:  
EXERCISE ITS JURISDICTION OVER ) AUG 19 1997  
SUCH SERVICES. )

BY THE COMMISSION:

Abby R. Gray, Administrative Law Judge

On April 16, 1997, GTE Card Services Incorporated, d/b/a GTE Long Distance ("Applicant") filed with the Commission its Application for a Certificate of Territorial Authority ("CTA") to resell local exchange services, and for the Commission to decline to exercise its jurisdiction over such services. Because Applicant requests authority to resell telephone exchange service furnished by an affiliated incumbent local exchange carrier, the Commission anticipated intervention by other parties in this Cause and therefore scheduled the Application for a prehearing conference rather than initiating the expedited procedure provided for certification of resellers of local exchange service approved by the Commission's order issued July 1, 1996, in Cause No. 39983.

Pursuant to notice and as provided or by 170 IAC 1-1-16, a prehearing conference was held in this Cause on May 20, 1997. Prior to the prehearing conference AT&T Communications of Indiana, Inc. ("AT&T"), filed a notice of opposition and petitioned to intervene as a party in this Cause, and requested a hearing. As a result of the hearing agreed upon by all parties at the prehearing conference, AT&T withdrew its notice of opposition to the Application conditioned upon the opportunity to fully participate in the proceedings on the merits of the Application. Subsequent to the prehearing conference, a joint petition to intervene was filed by Sprint Communications Company L.P. ("Sprint") and United Telephone Company of Indiana ("United"), no objection to such intervention was made by any party, and intervention was granted. Pursuant to the provisions of the Commission's prehearing conference Order issued May 28, 1997, Applicant filed its prefiled testimony and evidence in support of the Application on May 30, 1997. None of the intervening parties prefiled testimony on the

date established therefore by the prehearing conference order. On the date the prefiled testimony of the Office of the Utility Consumer Counselor ("OUCC") was due pursuant to the prehearing conference order and as extended by agreement of the parties, the OUCC filed, on July 24, 1997, its notice of intent not to file testimony and submission of Settlement Agreement entered into by and between the OUCC, Applicant and AT&T, which said Settlement Agreement is attached to this Order as Appendix A. By its July 24, 1997 filing, the OUCC represented that joint intervenors Sprint and United, who were not parties to the Settlement Agreement, did not object to the settlement and the Commission has received no indication to the contrary from Sprint or United.

Pursuant to proper notice as required by law, a public evidentiary hearing was scheduled and held in this Cause on August 5, 1997, in Room E306 of Indiana Government Center South, Indianapolis, Indiana, at 9:30 a.m., EST. Proofs of publication of the notice of the hearing have been incorporated into the record and placed in the official files of the Commission. The Applicant, the OUCC, and intervenor AT&T appeared at the hearing. No members of the general public appeared.

At the hearing, Applicant's counsel represented that subsequent to the date the Application was filed, Applicant's articles of incorporation had been amended to change its name only, and that on July 17, 1997, it had duly filed with the Indiana Secretary of State its Amended Certificate of Authority to reflect the change of Applicant's name from GTE Card Services Incorporated to GTE Communications Corporation. Applicant's Amended Certificate of Authority issued by the Indiana Secretary of State was made a part of the record as Applicant's Exhibit 1 without objection by any party.

Based upon the record evidence presented by Applicant and the agreements of the parties joining in the Settlement Agreement, the Commission now finds as follows:

1. Jurisdiction and Notice. Applicant seeks the issuance of a CTA and related relief pursuant to I.C. 8-1-2-88 and 8-1-2.6. Applicant proposes to provide "telephone service" as that term is defined in the Public Service Commission Act, as amended, and the provision of such service by Applicant will result in Applicant becoming a "public utility" and a "telephone company" as those terms are defined in I.C. 8-1-2-1 and 8-1-2-88, respectively. On July 1, 1996, the Commission made its Interim Order in Cause No. 39983, In The Matter Of The Investigation On The Commission's Own Motion Into Any And All Matters Relating To Local Telephone Exchange Competition Within The State Of Indiana. In said Interim



Order the Commission found that "... resellers ... must seek certification pursuant to the criteria set forth in Finding Paragraph 5(F) ... in the areas in which they intend to resell services and are required to pay the public utility fee as defined in I.C. 8-1-6-1 et seq. (Ordering Paragraph No. 2). More particularly, Finding Paragraph 5(F) states:

Every entity needs to obtain a CTA before having the ability to provide service in Indiana. To obtain a CTA, the entity must file a verified request together with evidence to support the entity's financial, technical, and managerial abilities to provide such service. The entity should also present evidence indicating the type, means and location of service the entity proposes to provide, and why such service would be in the public interest and in furtherance of the goals of full and fair competition. In reviewing any financial information provided by a prospective entity, the Commission will give due regard to considerations of an entity's ability to maintain the Commission's expectations regarding high quality telephone service. After receiving such a verified petition and supporting evidence, the Commission will thereafter publish notice that a request for a Certificate of Territorial Authority has been made. If any other entity chooses to oppose such a request, that entity should file notice with the Commission and be prepared to offer evidence to support their particular opposition as to why any of the four criteria set forth above have not been met through the verified petition process of the applying telephone utility. Such an opposing party should file its opposition in written form within 30 days after a request for a CTA has been made with the Commission.

Due, legal and timely notice of the Application and the public hearing conducted thereon was caused to be published by the Commission. Applicant proposes to provide telephone exchange telecommunications service throughout the state of Indiana on a bundled resale basis and, thus, is subject to Commission jurisdiction.

Intervenors AT&T, Sprint and United are each telephone companies which have been issued CTAs by this Commission for the provision of telephone services. Therefore, the Commission has jurisdiction over the parties and the subject matter of these proceedings.

2. Relief Requested By Application. The record in this Cause establishes that Applicant has complied with the requirements of I.C. 8-1-2-98 as well as the procedures established by the Commission's Interim Order dated July 1, 1996, in Cause No. 39938. Applicant filed a verified request for a CTA to resell bundled local exchange services throughout Indiana, accompanied by evidence describing Applicant's financial, technical and managerial capabilities to provide the proposed service. Additionally, Applicant filed a proposed form of tariffs with its Application and evidence indicating the type, means and location of services that it proposes to provide and recited the reasons why its proposed service would be in the public interest and in furtherance of the goals of full and fair competition. Applicant has also requested, and supported by its verified Application and witness testimony, for the Commission to decline to assert its jurisdiction in part over its proposed services.

The Settlement Agreement entered into between the OUCC, the Applicant and AT&T, and to which Sprint and United did not object, resolves concerns by the OUCC and AT&T about the effect of Applicant's resale of the bundled telephone exchange services of its affiliated incumbent local exchange carrier, GTE North Incorporated ("GTEN"), in GTEN's service territory. We find that the Settlement Agreement reasonably addresses the issues presented by such resale by Applicant of GTEN's telephone exchange services in GTEN's service territory, and find that the Settlement Agreement should be approved. However, by such approval we hereby find and declare that the Commission should not allow this Order or the Settlement Agreement approved by this Order to be used as an admission or as a precedent against the signatories to the Settlement Agreement except to the extent necessary to enforce their terms.

Applicant's Application was made pursuant to the procedure established by the Commission's Interim Order on bundled resale dated July 1, 1996, in Cause No. 39983. Therefore, we find that the Commission should decline to exercise its jurisdiction over Applicant except and to the degree such jurisdiction is retained by such order and subsequent orders of generic application issued by the Commission relating to and affecting bundled resale of local exchange services, universal service or access charge reform, within the meaning of such orders. Such jurisdiction should include, but not be limited to, continuing jurisdiction over informational tariff filings and enforcement of the terms of the Settlement Agreement.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Applicant GTE Communications Corporation is hereby granted a Certificate of Territorial Authority to provide local exchange telecommunications service (i.e., telephone exchange service) to the public throughout the State of Indiana on a bundled resale basis in accordance with the findings contained in this Order, including the Settlement Agreement attached as Appendix A, and the provisions of the Commission's Order in Cause No. 39983 dated July 1, 1996. This Order and the attached Settlement Agreement shall be the sole evidence of such Certificate of Territorial Authority.

2. Applicant shall comply with all requirements of any subsequent orders in Cause No. 39983 or other causes relating to bundled resale of local exchange telecommunications services.

3. This Order shall be effective on and after the date of its approval.

MCCARTY, HUFFMAN AND ZIEGNER CONCUR; KLEIN AND SWANSON-HULL ABSENT:  
APPROVED:

AUG 19 1997

I hereby certify that the above is a true and correct copy of the Order as approved.



Brian J. Cohee  
Executive Secretary to the Commission

Exhibit A  
Cause No. 40831  
Page 1 of 2

### SETTLEMENT AGREEMENT

GTE Card Services Incorporated, dba GTE Long Distance ("GTE-LD"), the Office of Utility Consumer Counselor ("OUCC"), and AT&T Communications of Indiana, Inc. ("AT&T"), by counsel, hereby agree and stipulate that the issuance of a CTA to GTE-LD for resale of bundled local exchange service to the public as requested by GTE-LD in Indiana Utility Regulatory Commission Cause No. 40831 shall be conditioned upon the following terms and conditions:

- a. All telecommunications services, local exchange services, or unbundled network elements obtained by GTE-LD from GTE North Incorporated and Contel of the South, Inc., collectively referred to as GTE North ("GTEN"), shall be pursuant to the rates, terms and conditions of an approved tariff or subject to the same terms and conditions as provided in an agreement approved under Section 252 of the Telecommunications Act of 1996 to which GTEN is a party.
- b. All transactions between GTE-LD and GTEN directly related to the provision of telecommunications services or facilities, including, but not limited to, service ordering, service availability, service installation, service maintenance and operational support systems, to be used by GTE-LD to offer or provide telecommunications services in GTEN's local exchange service areas in Indiana shall (i) be subject to the Federal Communications Commission's affiliate transaction rules, (ii) be based on arm's length negotiations between GTE-LD and GTEN or any of its agents, (iii) not discriminate against any other carriers receiving similar services or facilities from GTEN, (iv) be reduced to a written agreement, (v) be filed with the Commission in accordance with the procedures set forth in I.C. § 8-1-2-49, and (vi) not unlawfully discriminate against any consumer of telecommunications services. Nothing herein shall preclude GTE-LD from requesting that the Commission treat and consider the agreement or any portions thereof as confidential, proprietary or trade secret information.
- c. GTE-LD will not jointly own with GTEN any transmission or switching facilities.
- d. GTE-LD will have no access to any customer proprietary network information associated with or attributable to GTEN's provision of local exchange or access services except as provided in 47 U.S.C. 222.
- e. GTE-LD shall operate independently. It shall maintain its own books of account, have separate officers and market its local exchange services separate from GTEN.
- f. The Commission must assure the parties that it is not the Commission's intent to allow this Settlement Agreement or the Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of this Settlement Agreement.

Exhibit A  
Cause No. 40831  
Page 2 of 2

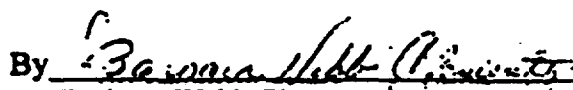
These conditions shall remain in full force and effect until lifted or modified by the Commission in a future order. This Agreement may be executed in separate counterparts with the same force and effect as if all parties executed a single document.

GTE CARD SERVICES INCORPORATED  
DBA GTE LONG DISTANCE

By 

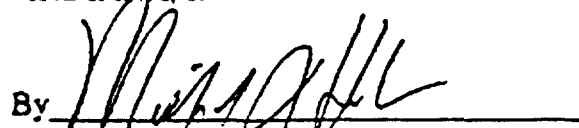
Larry J. Wallace  
Parr Richey Obremskey & Morton  
1600 Market Tower  
10 West Market Street  
Indianapolis, IN 46204

OFFICE OF UTILITY CONSUMER  
COUNSELOR

By 

Barbara Webb Clements  
Office of Utility Consumer Counselor  
N501, Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, Indiana 46204

AT&T COMMUNICATIONS OF  
INDIANA, INC.

By 

Michael J. Huston  
Baker & Daniels  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204